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HSINCHU 30070 TW TAIWAN

MAILED
MAR 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Shin-Jen Shiao	:	
Application No.: 10/554,315	:	ON PETITION
Filed: October 24, 2005	:	
Attorney Docket No.: None	:	

This is a decision on the renewed petition under the unavoidable provisions of 37 CFR 1.137(a), filed December 17, 2010, to revive the above-identified application.

The petition is DISMISSED.

The application became abandoned for a failure to reply to a Restriction Requirement mailed August 28, 2007. A Notice of Abandonment was mailed on September 29, 2007. On May 10, 2010 and September 29, 2010 petitions under the provisions of 37 CFR 1.137(a) were filed; however, the petition were dismissed in decisions mailed September 9, 2010 and November 17, 2010, respectively. On December 17, 2010, the present petition was filed wherein petitioner again argues that the failure to respond was a result of applicant's duly appointed attorney's failure to forward the outstanding Office action to applicant.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (3).

Petitioner's argument has been considered, but the result in the same, applicant is bound by the consequences of the actions or inactions of his duly authorized and voluntarily chose representative. Accordingly, the showing of record is not sufficient to establish to the satisfaction of the Director that the failure to respond was an unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).

Since petitioner has not carried the burden of proof to establish to the satisfaction of the Director that the delay was unavoidable, the petition cannot be granted under the provisions of 37 CFR 1.137(a).

ALTERNATIVE VENUE

While this is not a final agency action within the meaning of 5 U.S.C. § 704, petitioner is strongly encourage to consider filing a petition stating that the delay was unintentional under the provisions of 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$810 petition fee and the required reply, unless previously filed.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter must be submitted within TWO (2) MONTHS from the mail date of this decision and should be addressed as follows:

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By fax: (571) 273-8300
 ATTN: Office of Petitions

By internet: EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)